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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

VOHRA WOUND PHYSICIANS  
MANAGEMENT, LLC, a Delaware limited  
liability company,

Plaintiff/ Counter-Defendant

vs.

GORDIAN MEDICAL, INC., d/b/a  
AMERICAN MEDICAL TECHNOLOGIES, a  
Nevada corporation; SUZETTE HOYT, an  
individual; and DOES I through X, inclusive,

Defendants/ Counterclaimant

CASE NO.: 2:19-cv-01825-KJD-VCF

**PLAINTIFFS/COUNTER-**  
**DEFENDANT'S ANSWER TO**  
**COUNTERCLAIM**

Plaintiff/ Counter-Defendant , Vohra Wound Physicians Management, LLC (“Plaintiff/  
Counter-defendant”), by and through their undersigned counsel hereby files this answer in

1 response to the counterclaim (the “Counterclaim”) filed by Gordian Medical, Inc. (“Defendant/  
2 Counterclaim Plaintiff”) contained in their answer to the Plaintiff’s complaint.

3  
4 **GENERAL OBJECTION**

5 Plaintiff/Counter-Defendant states that the purported “Counterclaim” does not comply  
6 with FRCP Rule 10(b). Each numbered paragraph of the Counterclaim makes multiple  
7 statements of fact and are not limited to a single set of circumstances. Without waiving said  
8 objection, the Plaintiff states as follows:

9  
10 **JURISDICTION**

11 1. Plaintiff/Counter-Defendant admits that there is complete diversity of citizenship,  
12 but denies that the amount in controversy exceeds \$75,000.00.

13 2. Plaintiff/Counter-Defendant admits the allegations contained in this paragraph for  
14 jurisdictional purposes only.

15  
16 **PARTIES**

17 3. Plaintiff/Counter-Defendant admits that Defendant/ Counterclaim Plaintiff is a  
18 Nevada corporation, but does not have knowledge or information sufficient to form a belief as to  
19 the truth or falsity of the remaining allegations contained in this paragraph, and therefore, denies  
20 those allegations.

21 4. Plaintiff/Counter-Defendant admits the allegations contained in this paragraph.

22  
23 **BACKGROUND**

24 5. Plaintiff/ Counter-Defendant Plaintiff/ Counter-Defendant denies the allegations  
25 contained in this paragraph.

26 6. Plaintiff/ Counter-Defendant Plaintiff/ Counter-Defendant states that it does not  
27 have knowledge or information sufficient to form a belief as to the truth or falsity of the  
28

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1 allegations contained in this paragraph, and therefore, denies those allegations.

2 7. Plaintiff/ Counter-Defendant Plaintiff/ Counter-Defendant states that it does not  
3 have knowledge or information sufficient to form a belief as to the truth or falsity of the  
4 allegations contained in this paragraph, and therefore, denies those allegations.

5 8. Plaintiff/ Counter-Defendant Plaintiff/ Counter-Defendant states that it does not  
6 have knowledge or information sufficient to form a belief as to the truth or falsity of the  
7 allegations contained in this paragraph, and therefore, denies those allegations.

8 9. Plaintiff/ Counter-Defendant Plaintiff/ Counter-Defendant states that it does not  
9 have knowledge or information sufficient to form a belief as to the truth or falsity of the  
10 allegations contained in this paragraph, and therefore, denies those allegations.

11 10. Plaintiff/ Counter-Defendant Plaintiff/ Counter-Defendant states that it does not  
12 have knowledge or information sufficient to form a belief as to the truth or falsity of the  
13 allegations contained in this paragraph, and therefore, denies those allegations.

14 11. Plaintiff/ Counter-Defendant Plaintiff/ Counter-Defendant states that it does not  
15 have knowledge or information sufficient to form a belief as to the truth or falsity of the  
16 allegations contained in this paragraph, and therefore, denies those allegations.

17 12. Plaintiff/ Counter-Defendant Plaintiff/ Counter-Defendant admits the allegations  
18 contained in this paragraph, and state that these are facts not claims.

19 13. Plaintiff/ Counter-Defendant Plaintiff/ Counter-Defendant admits that Vohra  
20 affiliated physicians have treated patients for which Defendant/ Counterclaim Plaintiff has  
21 provided wound care supplies, but denies the remaining allegations contained in this paragraph.

22 14. Plaintiff/ Counter-Defendant Plaintiff/ Counter-Defendant denies the allegations  
23 contained in this paragraph, and states that facilities are not lawfully exclusive to  
24 Defendant/Counterclaim Plaintiff.

1           15.     Plaintiff/ Counter-Defendant Plaintiff/ Counter-Defendant admits that in late 2017  
2 it implemented a wound care dressing program as part of its business model and that Vohra  
3 entities are for-profit authorized providers of both wound care physician services and associated  
4 wound care treatment products in certain states to eligible Medicare Part B patients, but denies  
5 the remaining allegations contained in this paragraph.  
6

7           16.     Plaintiff/ Counter-Defendant Plaintiff/ Counter-Defendant admits that the  
8 relationship that had existed between Gordian clinical specialists and Vohra affiliated Physicians  
9 changed after Plaintiff/ Counter-Defendant implemented its wound care dressing program (as  
10 exhibited by Defendant/ Counterclaim Plaintiff's unlawful and wrongful acts), but denies the  
11 remaining allegations contained in this paragraph.  
12

13           17.     Plaintiff/ Counter-Defendant admits that Vohra affiliated physicians have  
14 prescribed wound care dressings from Vohra's wound care dressing program, but denies the  
15 remaining allegations contained in this paragraph.  
16

17           18.     Plaintiff/ Counter-Defendant admits that Vohra affiliated physicians might not be  
18 the only physician group treating patients at a long term care facility. Vohra affiliated physicians  
19 respect the patients' freedom of choice to order supplies from a supplier of their choice; does not  
20 have knowledge or information sufficient to form a belief as to the truth or falsity of the  
21 allegations contained in the last sentence of this paragraph, and therefore, denies those  
22 allegations; and denies the remaining allegations of this paragraph.  
23

24           19.     Plaintiff/ Counter-Defendant denies the allegations in this paragraph. Vohra  
25 Physicians prescribe the wound care dressings and there is no medical necessity to notify the  
26 long term care facility ("LTC"), also commonly called a nursing facility, and any wound care  
27 dressings furnished and ordered are prescribed and the prescriptions are made with patient  
28 authorization and no authorization is required by the LTC; and does not have knowledge or

1 information sufficient to form a belief as to the truth or falsity of the remaining allegations  
2 contained in this paragraph, and therefore, denies those allegations. In fact the physician note  
3 clearly indicates that the physician will be dispensing and supplying dressings to his/her patient.

4 20. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

5 21. Plaintiff/ Counter-Defendant admits that Vohra Medicare enrolled DMEPOS  
6 (Durable Medical Equipment, Prosthetics, Orthotics, and Supplies) suppliers dispense and bill  
7 for surgical wound dressings in compliance with applicable Medicare rules and regulations.

8 22. Plaintiff/ Counter-Defendant admits that Medicare bills require a physician's  
9 signature and that bills are submitted to Medicare once a physician sign's the request, but denies  
10 the remaining allegations in this paragraph and disclaims any liability for Gordian's unlawful  
11 double billing to Medicare.

12 23. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

13 24. Plaintiff/ Counter-Defendant admits that it may be improper for Gordian clinical  
14 specialists to accompany Vohra physicians on rounds or accompany any physicians on rounds  
15 with Vohra Patients, which may constitute the unauthorized practice of medicine or improperly  
16 substitute the judgment of the Gordian clinical specialist over that of the Vohra physician and/or  
17 the choice of Vohra Patients, but denies the allegations contained in this paragraph.

18 25. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

19 26. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

20 27. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

21 28. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

22 29. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph,  
23 denies any violation of federal and state anti-kickback laws, and denies that there is no  
24 compensation paid to Vohra physicians is related to the number of or volume of wound care  
25  
26  
27  
28

dressings prescribed.

30. This paragraph calls for a legal conclusion, to which no response is required.

31. Plaintiff/Counter-Defendant denies the allegations contained in this paragraph.

32. Plaintiff/ Counter-Defendant denies any unlawful kickbacks to its physicians.

33. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

34. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

**FIRST CLAIM FOR RELIEF**  
**(Tortious Interference With Contractual Relations)**

35. Plaintiff/ Counter-Defendant incorporate and reassert each of their responses to the like numbered paragraphs identified and incorporated by Defendants.

36. Plaintiff/ Counter-Defendant do not have knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in this paragraph, and therefore, deny those allegations.

37. Plaintiff/ Counter-Defendant do not have knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in this paragraph, and therefore, deny those allegations.

38. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

39. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

40. Plaintiff/ Counter-Defendant do not have knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in this paragraph, and therefore, deny those allegations.

41. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

**SECOND CLAIM FOR RELIEF**  
**(Tortious Interference With Business Relationships)**

42. Plaintiff/ Counter-Defendant incorporate and reassert each of their responses to the like numbered paragraphs identified and incorporated by Defendants.

43. Plaintiff/ Counter-Defendant do not have knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in this paragraph, and therefore, deny those allegations.

44. Plaintiff/ Counter-Defendant do not have knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in this paragraph, and therefore, deny those allegations.

45. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

46. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

47. Plaintiff/ Counter-Defendant do not have knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in this paragraph, and therefore, deny those allegations.

48. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

**THIRD CLAIM FOR RELIEF**  
**(Defamation)**

49. Plaintiff/ Counter-Defendant incorporate and reassert each of their responses to the like numbered paragraphs identified and incorporated by Defendants.

50. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

51. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

52. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

53. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

54. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

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1 55. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

2 56. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

3 57. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

4 58. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

5  
6 **FOURTH CLAIM FOR RELIEF**  
**(False Advertising in Violation of the Lanham Act)**

7 59. Plaintiff/ Counter-Defendant incorporate and reassert each of their responses to  
8 the like numbered paragraphs identified and incorporated by Defendants.

9  
10 60. Plaintiff/ Counter-Defendant admits that it is a competitor of Gordian in respect of  
11 the sale of wound care dressings, but denies the remaining allegations contained in this  
12 paragraph.

13 61. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

14 62. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

15 63. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

16 64. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

17 65. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

18  
19 **FIFTH CLAIM FOR RELIEF**  
**(Deceptive Trade Practices Under N.R.S. § 598.0915)**

20 66. Plaintiff/ Counter-Defendant incorporate and reassert each of their responses to  
21 the like numbered paragraphs identified and incorporated by Defendants.

22  
23 67. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

24 68. Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

25 **SIXTH CLAIM FOR RELIEF**  
**(Unfair Competition)**

26  
27 69. Plaintiff/ Counter-Defendant incorporate and reassert each of their responses to  
28 the like numbered paragraphs identified and incorporated by Defendants.



1           70.     Plaintiff/ Counter-Defendant Defendant denies the allegations contained in this  
2 paragraph.

3           71.     Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

4           72.     Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

5           73.     Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

6           74.     Plaintiff/ Counter-Defendant denies the allegations contained in this paragraph.

7  
8                   **RESPONSE TO “PRAYER FOR RELIEF”**

9           Plaintiffs/Counter-defendants deny all requested forms of relief and demands that  
10 judgment against Defendant/Counterclaimant dismissing the complaint with prejudice be entered  
11 and seeks judgment in favor of Plaintiff/Counter-Defendant against Defendant/Counterclaimant  
12 for costs, attorney’s fees and any other remedy which the Court deems just and equitable.

13  
14  
15                   **PLAINTIFFS/COUNTERCLAIM DEFENDANT’S**  
16                   **AFFIRMATIVE AND OTHER DEFENSES**

17           Plaintiff/Counter-Defendant asserts the following affirmative and other defenses without  
18 assuming any burden of production or proof that it would not otherwise bear.

19                   **FIRST AFFIRMATIVE DEFENSE**  
20                   **(Failure to State a Cognizable Claim)**

21           The Counterclaim, and each purported cause of action asserted therein, fails to state a  
22 claim upon which relief can be granted. Among other deficiencies in the Counterclaim, the  
23 Counterclaim fails to meet the standard for pleadings set by the Supreme Court in Ashcroft v.  
24 Iqbal, 556 U.S. 662 (2009) and Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007).  
25 Moreover, Plaintiff/ Counter-Defendant asserts that it has not engaged in the alleged conduct as  
26 complained of by Defendant/Counterclaimant.

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Moreover, Plaintiff/ Counter-Defendant alleges that First and Second Counts fail because: (1) Plaintiff/ Counter-Defendant is a party to the alleged business relationship or contract at issue; (2) Plaintiff/ Counter-Defendant was acting to protect and promote their own economic or financial interest; (3) Plaintiff/ Counter-Defendant's actions constitute lawful competition and any relationship or contract Defendant/ Counterclaimant may have had was terminable at will. Defendant/ Counterclaimant's Counterclaim indicates that Plaintiff/ Counter-Defendant and Defendant/ Counterclaimant previously worked for the same patients, with Plaintiff/ Counter-Defendant providing physician wound care services and Defendant/ Counterclaimant providing wound care products. The Counterclaim also alleges that Plaintiff/ Counter-Defendant has now moved into not only providing physician wound care services, but also the products that the physician prescribes for wound care treatment—to its very same patients. Thus, both before and after the alleged tortious conduct, Plaintiff/Counter-defendants had a business relationship with the patients whether providing physician wound care services or services and products. Therefore, any action taken by Plaintiff/Counter-defendants to grow, protect, or extend these relationships is not actionable.

**SECOND AFFIRMATIVE DEFENSE**  
**(Unclean Hands)**

Defendant/Counterclaimant's claims are barred because of unclean hands by virtue of its own course of conduct in supplying or selling wound care products, including, without limitations, false statements it made to other with respect to its products and the lawfulness of activities of other parties and their products, knowing such actions and conduct preclude it from pursuing the alleged claims against Plaintiff/ Counter-defendant.

Moreover, as detailed in Plaintiff/ Counter-defendant's complaint, Defendant/ Counterclaim Plaintiff comes to this court with unclean hands—soiled from its own efforts at keeping Plaintiff/ Counter-Defendant from gaining a market share through lawful competition.

**THIRD AFFIRMATIVE DEFENSE**  
**(No Liability)**

As Plaintiff/Counterclaimant has not engaged in the alleged conduct as complained of by Defendant/Counterclaimant, Plaintiff/Counter-Defendant asserts Defendant/Counterclaimant did not incur any damages. Any alleged damage allegedly suffered by Defendant/Counterclaimant was due to Defendant/Counterclaimant's affirmative actions, omissions and/or failures with respect to its marketing, sale and supply of its wound care products and does not give rise to any liability of Plaintiff/ Counterclaimant.

**FOURTH AFFIRMATIVE DEFENSE**  
**(Estoppel)**

By reason of Defendant/Counterclaimant's courses of conduct in supplying or selling wound care products and false statements it made to others with respect to its products and the lawfulness of activities of other parties and their products, Defendant/Counterclaimant is estopped from obtaining the relief sought, or any relief at all.

**ADDITIONAL DEFENSES**

Because the Defendant/Counterclaimant's claims are conclusory terms and are simply unfounded, Plaintiff/Counter-Defendant cannot reasonably anticipate all applicable affirmative defenses. Plaintiff/ Counter-Defendant reserves the right to assert such additional affirmative defenses and other defenses as may appear and prove applicable during the course of the discovery and litigation.

WHEREFORE, having fully answered the Defendant/Counterclaimant's Counterclaim, Plaintiff/Counter-Defendant respectfully requests this Honorable Court:

A. Enter a judgment in favor of Plaintiff/Counter-Defendant awarding nothing to Defendant/Counterclaimant;

1 B. Enter a judgment awarding Plaintiff/Counter-defendant's costs which they have  
2 incurred in defending this action;

3 C. Enter a judgment awarding Plaintiff/Counter-Defendant attorney fees which it  
4 has incurred in defending this action and the terms of any additional applicable contractual,  
5 statutory, legal or equitable right; and  
6

7 D. Grant such other relief as this Court deems appropriate, equitable, and just.

8 DATED this 1<sup>st</sup> day of June, 2020.

9 Prepared and Submitted by:

10 **KUNG & BROWN**

11 /s/ A.J. Kung

12 A.J. Kung, Esq.

13 Nevada Bar No. 7052

14 Brandy Brown, Esq.

15 Nevada Bar No. 9987

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18 *Attorneys for Plaintiff Vohra Wound  
19 Physicians Management, LLC*

20 -and-

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22 /s/ Kevin P. Gildea

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of June, 2020, a true and correct copy of the foregoing PLAINTIFFS/COUNTER- DEFENDANT’S ANSWER TO COUNTERCLAIM was served pursuant to FRCP 5(b)(2)(E), via first class mail and the CM/ECF electronic filing system to all counsel and parties on the service list as follows:

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